DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

60035

FILE: B-183083 DATE: NOV 28 1975 97662

MATTER OF: Department of the Interior - Preliminary Agreement to Set Effective Date for Wage Rates

DIGEST:

Interior Department and AFGE negotiate wage rates for wage board employees. Union desires to agree in advance to effective date of new wage agreement while continuing to bargain over rate. Interior claims such a preliminary agreement must contain independently ascertainable standard for wage rate in order to avoid ban on retroactive wage increases. Such an interpretation is not warranted by our past decisions. It is permissible for an agency to agree in advance on an effective date to implement wages yet to be negotiated where the agreed upon date is not earlier than the date of the preliminary agreement.

Both the Department of the Interior and the American Federation of Government Employees (AFGE) have requested that we clarify our earlier decisions concerning the effective implementation date of certain negotiated wage schedules of Interior Department employees. The AFGE request applies to their Locals 1899 and 1916 representing employees of the Bureau of Mines and the Mine Enforcement Safety Administration. The Interior Department requests our decision more generally, so as to advise them concerning their entire range of collective bargaining agreements, numbering approximately 25 at the present time.

The AFGE request advises us that the two locals negotiate directly with the two agencies mentioned above. However, at certain times the parties are unable to agree to new compensation schedules prior to the expiration of their then presently existing contracts. On such occasions the unions have attempted to make agreements with the agencies to make any compensation schedule ultimately adopted effective as of the day after the expiration date of the existing contract. According to AFGE, however, the Interior Department has consistently refused to bargain on this point on the basis of Comptroller General decisions and has contended that the entire new agreement must be agreed to simultaneously. The Department's view is modified only to the extent that if labor and management preliminarily agree that the "prevailing wage in the area," or some equivalent which can be independently ascertained, is agreed to, then when that rate is ascertained, it may

be applied as of the date fixed by the preliminary agreement. The AFGE sees little difference in the two situations and thus feels both should be permissible. In its letter of May 16, 1975, the union's position is stated as follows:

> "We believe that all that is required is that there be agreement between a competent wage fixing authority and a union on the effective date to implement the negotiated wages. This agreement would authorize that the negotiated wages would go into effect on the agreed to date even though the amount of the increase was not agreed to until a later date. The procedure the negotiating parties use in arriving at the agreed to rate is immaterial."

The Department of the Interior's position is that such a preliminary agreement may not be effected unless both parties agree to an independently ascertainable wage rate. This rate, when ascertained, would become effective as of the date fixed by the preliminary agreement, without further face to face bargaining between the parties.

In a letter to us from the Deputy Assistant Secretary of the Interior dated June 3, 1975, the question presented to us is phrased as follows:

> " * * * The question to be decided is: can labor and management agree on April 15, to make rates effective on another date, e.g., May 25, and then start negotiations on wage rates which may not be completed until July 15 or later? In this example, the April 15 agreement would cover the effective date only. It would not mention specific private sector rates to be accepted or a formula to be applied to certain survey data."

In a long line of decisions, this Office has been called upon to rule on various questions in this area of labor negotiations. Both parties have cited the same past decisions to support their claims. Our decision B-62932, B-75121, July 5, 1960, allowed preliminary agreements between competent wage fixing authorities and labor unions that would prospectively set the effective date of a new compensation scheme, despite the fact that exact rates were to be determined in the future. The requirements of 24 Comp. Gen. 676 (1945), requiring final action by a competent wage-fixing authority before wage increases could become

effective, were held not to be violated by such agreements. This was so because all involved knew that future liabilities might be incurred and the current compensation paid was seen as an advance against the new rate. B-126868, April 8, 1963.

In its letter of June 3, 1975, the Interior Department stated its interpretation of our decisions as follows:

> "We have historically interpreted your line of decisions on setting effective dates by prior agreement to also require specificity as to which private sector rates are being agreed to or how certain rates will be treated in determining the actual rates of pay for the Government positions involved. * * * We think that in addition to the effective date there must be agreement on what rates will be accepted or what formula will be applied to certain survey data when it becomes available."

The Interior Department's interpretation goes beyond the scope of our decisions on this subject. Nowhere is the requirement of exactness stated explicitly. When viewing the range of situations covered by these decisions, it is clear that no such requirement was intended. In the past our Office has viewed tentative agreements between a competent wage fixing authority and a union which prospectively set the effective date for wage increases as authorizing increased payments from that date even though the amount of the increase is not determined or agreed to until a later date. See B-183083, August 12, 1975.

While it is true that in some past situations the future wage rates could be determined without future bargaining through wage surveys conducted by the administrative department or agency, that degree of preciseness was not required where wage adjustments for Federal wage board employees were determined through collective bargaining under labor-management agreements. In the case presented all involved knew that future rates might be higher than in the past and uncertainty existed as to the exact amount of future increases. We see little difference between having that uncertainty depend upon future negotiations between private employers and unions and having it depend on future negotiations between the Department and unions.

Accordingly, we agree with the AFGE that it is permissible for an agency and a union to agree in advance on an effective date to implement negotiated wages regardless of the procedure to be used in arriving at

the wage rate. However, the agreed upon date may not be earlier than the date of the preliminary agreement.

Thus, the question posed by the Department of the Interior is answered in the affirmative.

PAUL G. DEMBLING
Acting Comptroller General
of the United States